

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA REALTY COMPANY, INC.,

Case No. CVCV046440

PLAINTIFF,

vs.

KELLER WILLIAMS REALTY, INC.;
GOLDEN CIRCLE REAL ESTATE
GROUP, L.L.C., D/B/A KELLER
WILLIAMS REALTY, GREATER DES
MOINES; SUSAN SANDERS
(individually); ELIZABETH SARCONI
(individually)

**PETITION AT LAW AND
JURY DEMAND**

DEFENDANTS.

COMES NOW Plaintiff Iowa Realty Company, Inc. ("Iowa Realty") and in support of its Petition at Law and Jury Demand states:

PARTIES

1. Defendant Keller Williams Realty, Inc. ("Keller Williams") is a Texas corporation doing business internationally and across the United States, including in Polk County, Iowa. Keller Williams is the largest real estate company in North America.
2. Defendant Golden Circle Real Estate Group, L.L.C., D/B/A Keller Williams Realty Greater Des Moines ("Keller Williams – Des Moines") is an Iowa limited liability company doing business in Polk County, Iowa. Keller Williams - Des Moines's members include citizens of Iowa.
3. Defendant Susan Sanders is an individual, member and investor of Keller Williams - Des Moines, and a resident of Dallas County, Iowa. Ms. Sanders conducts business in Polk County.

4. Defendant Elizabeth Sarcone is an individual and upon information and belief is a resident of Polk County, Iowa. Ms. Sarcone conducts business in Polk County.

5. Plaintiff Iowa Realty is an Iowa corporation doing business in Polk County, Iowa.

JURISDICTION

6. The facts giving rise to this suit occurred in Polk County, Iowa.

7. This Court has general subject matter jurisdiction under Iowa Code § 602.6101.

VENUE

8. Venue is proper in the Iowa District Court for Polk County under Iowa Code §§ 616.7; 616.14; and 616.18 because the actions giving rise to this suit occurred in Polk County, and defendants are doing business in Polk County.

JURY DEMAND

9. Plaintiff Iowa Realty demands a jury trial.

GENERAL ALLEGATIONS

I. Keller Williams's 2006 Misconduct

10. In 2006, Keller Williams representatives approached an active Iowa Realty real estate agent about the possibility of opening a new Keller Williams franchise in Des Moines. The representative explained that Keller Williams was interested in expanding its geographic presence by entering the Des Moines market.

11. At Keller Williams's invitation, the agent attended a seminar in Austin, Texas to learn more about the requirements for being "awarded" a new franchise, which Keller Williams terms a "market center," including the required personality testing, the necessary

number of investors and amount of capital investment, and the number of active agents he and the other investors would first need to recruit.

12. Keller Williams representatives told the agent that while he was working at Iowa Realty, he should try to recruit as many Iowa Realty agents as possible to join him in forming a new Keller Williams franchise. The agent was specifically instructed to focus on recruiting Iowa Realty agents because it was a large brokerage in Des Moines, and that Keller Williams's approach to entering a new market area was to "slay the dragon by cutting off its head."

13. Keller Williams also explained that it wanted him to recruit not just any Iowa Realty agents, but the ones who would have the largest impact on Iowa Realty and whose departure would attract the most attention. Keller Williams explained that it wanted a "wave" of agents to leave Iowa Realty to attract still more agents to the new Keller Williams market center.

14. In early 2006, the agent did in fact try to recruit other Iowa Realty agents to join him in starting a new Keller Williams franchise. He arranged for off-site meetings between Iowa Realty agents and Keller Williams representatives in hotels near Iowa Realty's offices. Once there, the Keller Williams representatives tried to sell Iowa Realty agents on the idea of starting a new market center.

15. In June 2006, Iowa Realty learned that Keller Williams was trying to open a new office in Des Moines and that it was focused almost exclusively on recruiting Iowa Realty agents.

16. In response to Keller Williams's improper and unlawful actions, Iowa Realty made reasonable efforts to understand Keller Williams's business model. The more it learned, the more Iowa Realty became concerned about many of Keller Williams's practices.

17. In particular, Iowa Realty was concerned that Keller Williams: (i) boasted that it invested \$0 in marketing and advertising its customers' homes and instead simply leached off the advertising investments of other brokerages; (ii) invested nothing in its local website or improving the customer experience; (iii) put recruiting agents ahead of the needs of its customers; (iv) employed a "Profit Sharing" system that allowed commissions earned in one state to flow to unlicensed people living in another state; and (v) used disruptive methods of recruiting agents, including providing misleading marketing materials suggesting such things as that agents could easily become millionaires.

18. Iowa Realty responded to Keller Williams's unethical and unlawful actions and its questionable business practices by sending Keller Williams a notification that its improper recruiting efforts were unethical and disruptive to Iowa Realty's business.

19. Iowa Realty further advised Keller Williams that in the event Keller Williams was ever successful in establishing a franchise in the Des Moines market, Iowa Realty would pay Keller Williams 0% of the amount posted on the Multiple Listing Service ("MLS") on Keller Williams's sales of Iowa Realty listings.

20. In 2006, Keller Williams's unlawful efforts failed and Keller Williams decided to temporarily suspend its improper activities.

21. Iowa Realty's policy of offering any Keller Williams franchise in the Des Moines area 0% commission on its MLS listings remained in effect after 2006.

II. Keller Williams's 2010/2011 Misconduct

22. In 2010, Ms. Kyra C. Bell, a Keller Williams broker from Tulsa, Oklahoma, decided she wanted to open a new Keller Williams market center. After taking the mandatory personality test, she was assessed by Keller Williams to have the desirable character traits to become an "operating principal." Without any specific location in mind, Ms. Bell began the more formal application process for being "awarded" a new Keller Williams franchise.

23. Ultimately, although Ms. Bell had never been to Iowa and had no connection to the state, Keller Williams decided Des Moines was the best location for her to open a new market center. Working at the direction of Keller Williams, Ms. Bell came to Des Moines for the first time in 2010 to begin recruiting investors and agents to form "Keller Williams – Des Moines," the new Keller Williams market center.

24. After several months, she recruited 7 investors: (1) Terrie Foster, another agent from Tulsa, Oklahoma; (2) Jacque Sackett, also from Tulsa, Oklahoma; (3) Joe Yamen, an insurance salesman with no real estate license or experience; (4) Doug Burnett, who ran Burnett Realty, a Des Moines real estate brokerage; (5) Brian Wentz, an agent with Burnett Realty who was considering leaving the real estate industry; and (6) Susan Sanders, an Iowa Realty agent.

25. Although Ms. Bell and Ms. Foster did not make any capital investments in Keller Williams - Des Moines, they collectively own 50% of the franchise, with Ms. Bell owning 35%, and Ms. Foster owning 15%. Mr. Burnett contributed all the assets of his brokerage for a 10% ownership interest, and the other investors each contributed \$40,000 for

a 10% interest. In addition to their capital investments, each investor also agreed to recruit at least 5 “high volume” agents.

26. The investors filed a Certificate of Organization for Golden Circle Real Estate Group, LLC (above defined Keller Williams - Des Moines) on December 9, 2011. Ms. Bell is identified as the Organizer and Registered Agent.

27. Investor Susan Sanders contractually committed to Keller Williams - Des Moines and purchased a 10% membership interest in the L.L.C. for \$40,000, on or before December 14, 2011.

28. Though committed to Keller Williams and Keller Williams - Des Moines, Ms. Sanders maintained her agent affiliation with Iowa Realty without disclosing her conflicting interest until she left three months later on March 13, 2012, in breach of her contractual agreements with Iowa Realty.

29. After learning that Doug Burnett was intending to affiliate with Keller Williams, Iowa Realty sent Mr. Burnett a letter dated January 18, 2012, reminding him that Iowa Realty still intended to offer any Keller Williams franchise 0% on sales of Iowa Realty’s MLS listings.

30. Iowa Realty received no response of any kind from Mr. Burnett, Keller Williams - Des Moines, or Keller Williams. No Keller Williams - Des Moines investor, owner, or agent made any effort to discuss Iowa Realty’s policies or understand its reasoning or concerns about Keller Williams’s past actions and its business model.

III. Keller Williams - Des Moines Files a Frivolous Lawsuit

31. Following its formation, Keller Williams - Des Moines was focused on forcing Iowa Realty to pay Keller Williams - Des Moines a percentage of the commission posted on the MLS.

32. Keller Williams - Des Moines knew, or should have known, however, that Iowa Realty's policy was lawful, complied with the standards and rules of the Des Moines Area Association of Realtors ("DMAAR"), and was an appropriate exercise of Iowa Realty's business discretion.

33. Keller Williams - Des Moines also knew, or should have known, that the courts were unable to provide the relief it sought. The United States Supreme Court, the Iowa Supreme Court, and all other courts across the country that have considered the issue have definitively ruled that any attempt to mandate commission sharing between brokers is unlawful.

34. To achieve its goal of forcing Iowa Realty to change its policy, Keller Williams - Des Moines, with the guidance and resources of Keller Williams, launched a publicity campaign in the hope of persuading customers to put pressure on Iowa Realty.

35. Keller Williams - Des Moines began by hiring a public relations specialist to champion its cause. The public relations specialist contacted numerous television stations, radio stations, print media, and online media to promote Keller Williams - Des Moines's version of events. For its part, Keller Williams - Des Moines did all it could to put the issue in the forefront of social media, with the expertise and financing of Keller Williams.

36. Keller Williams - Des Moines also posted a “Consumer Alert” on its website that claimed Iowa Realty was engaging in “anticompetitive behavior” and called on real estate buyers and sellers to pressure Iowa Realty to change its policy.

37. The pinnacle of Keller Williams - Des Moines’s public relations campaign came on June 27, 2012, when it filed a Petition in Polk County, Iowa (Case No. LACL12-5527) charging Iowa Realty with: (i) tortious interference with contract; (ii) tortious interference with prospective business relationships; (iii) injurious falsehood; (iv) unfair competition; (v) breach of contract; (vi) slander; and (vii) libel.

38. The same day, Keller Williams - Des Moines filed similar complaints with: (i) the Des Moines Area Association of Realtors (“DMAAR”); (ii) the Iowa Real Estate Commission; (iii) the Iowa Attorney General; and (iv) the Department of Justice. All of which have either received no action, or been resolved in Iowa Realty’s favor.

39. Keller Williams - Des Moines’s complaint with DMAAR was quickly resolved in Iowa Realty’s favor. The trade association and operator of the MLS ruled that Iowa Realty’s commission sharing policy complied with its rules and was an appropriate exercise of its business discretion.

40. Although Keller Williams - Des Moines contractually agreed to follow DMAAR rules and its interpretation of them, it nonetheless continued to pursue its claims in the Iowa district court.

41. Before its Petition was even filed, Keller Williams - Des Moines’s publicity machine was hard at work contacting national news organizations as well as local news stations across the Des Moines area and lining up interviews with as many reporters as possible.

42. Within 15 minutes of Keller Williams - Des Moines filing its petition, it had forwarded the petition to the media. In fact, Iowa Realty received a copy of the Petition from a Des Moines Register reporter before it had received service or even been made aware of the lawsuit from Keller Williams - Des Moines.

43. Within three hours of the lawsuit being filed, Keller Williams - Des Moines's attorney had given several interviews, and managed to get the story published on the Des Moines Register's blog site. Two days later, Inman News printed a three-page story that included a link to Keller Williams - Des Moines's Petition.

44. Iowa Realty's first response to Keller Williams - Des Moines's Petition was to move for dismissal of its claims. On October 10, 2012, the trial court dismissed Keller Williams - Des Moines's claims for: (i) injurious falsehood; (ii) unfair competition; and (iii) breach of contract for failure to state a claim.

A. Tortious Interference With Contract

45. Keller Williams - Des Moines's tortious interference with contract claim was entirely without factual or legal support.

46. Keller Williams - Des Moines's claim was based entirely on a theory that Iowa Realty interfered with *its own contracts* by allegedly failing to disclose its policies toward Keller Williams - Des Moines to its own customers.

47. Keller Williams - Des Moines knew, or should have known, however, that it is well established in Iowa law that a defendant cannot interfere with *its own contracts*. There is no more basic tenet of the tort of interference with contract than that the *plaintiff* must have a contract that the defendant could interfere with.

48. In more than a year of litigation that included extensive discovery requests from Iowa Realty, Keller Williams - Des Moines did not identify or produce a single Keller Williams - Des Moines contract that it alleged Iowa Realty interfered with.

49. Moreover, Keller Williams - Des Moines knew, or should have known, that it had no standing to bring a complaint about Iowa Realty's disclosures to its own customers.

50. Keller Williams - Des Moines also knew, or should have known, that the Iowa Attorney General's office had considered its complaint and ruled in Iowa Realty's favor by deciding that Iowa Realty's disclosure was full and complete, complied with Iowa law, and was not misleading to real estate consumers.

51. Finally, Keller Williams - Des Moines knew, or should have known, it had absolutely no basis to pursue its tortious interference with contract claim but did so anyway in an attempt to harass Iowa Realty and force it to change its policy.

B. Tortious Interference with Prospective Relationships

52. Similarly, Keller Williams - Des Moines had absolutely no factual or legal basis to pursue a claim for tortious interference with prospective relationships.

53. In over a year of litigation, it did not identify a single prospective relationship that it claimed Iowa Realty interfered with, much less provide any factual support for its allegation.

54. In discovery, Keller Williams - Des Moines initially identified one, and only one, prospective relationship that it claimed Iowa Realty interfered with. When Iowa Realty asked to depose that one customer, Keller Williams - Des Moines objected and said the customer had nothing to do with the lawsuit.

55. Taking Keller Williams - Des Moines at its word, Iowa Realty agreed not to depose its one customer and instead obtained an affidavit from the customer clearly stating that his refusal to work with Keller Williams - Des Moines had nothing to do with Iowa Realty or its policies.

56. Similarly, Keller Williams - Des Moines initially claimed that it had suffered at least \$11 million in damages from the alleged loss of agents, and the agents they would have recruited, and the agents those agents would have recruited, because of Iowa Realty's policy. After refusing to produce any factual support for its claim, and in response to Iowa Realty's motion to compel, Keller Williams - Des Moines filed a frivolous motion for a protective order arguing that the facts supporting its claims were "trade secrets."

57. Although Keller Williams - Des Moines steadfastly refused to provide any evidence supporting its new, previously undisclosed allegations, it told the Court in a hearing that it was nonetheless intent on pursuing its entirely unsupported \$11 million in damages.

58. The Court denied Keller Williams - Des Moines's motion for a protective order and Keller Williams - Des Moines never produced any evidence to support its claim. Nonetheless, it continued to pursue its interference with prospective business relationship claim.

59. Moreover, Keller Williams - Des Moines knew, or should have known, that a claim for tortious interference with prospective business relationship requires strict proof of an intent to harm or destroy.

60. Keller Williams - Des Moines also knew, or should have known, as each of its witnesses testified, that it had absolutely no factual basis for the belief that Iowa Realty acted with an improper intent of any kind. In fact, Keller Williams - Des Moines's corporate

representative testified in the underlying litigation that Keller Williams - Des Moines not only had no evidence of an improper intent, but that it never bothered looking for any.

61. Keller Williams - Des Moines knew, or should have known, it had no basis in fact or law to pursue its tortious interference with prospective business relationships claim but did so anyway.

C. Defamation.

62. Keller Williams - Des Moines's slander and libel claims were equally lacking in factual and legal support.

63. Keller Williams - Des Moines based its defamation claims on two internal Iowa Realty documents that it knew, or should have known, Iowa Realty did not distribute to the public or to anyone outside of its Valley West office.

64. In fact, Keller Williams - Des Moines's own investor, Ms. Susan Sanders, obtained the documents from her daughter, who was working as an Iowa Realty agent in its Valley West office.

65. Nonetheless, Keller Williams - Des Moines attached the internal documents to its Petition and forwarded them to numerous members of the press, including television stations, radio stations, and multiple print and online news sources.

66. At Keller Williams - Des Moines's request, the Des Moines Register, the Business Record, and Inman News, among others, published Iowa Realty's internal comments that Keller Williams - Des Moines alleged were defamatory.

67. In its corporate deposition, Keller Williams - Des Moines admitted that it was harmed at least as much by the media publication as it was by Iowa Realty's initial

comments. It also admitted that it had no basis to assume any harm from Iowa Realty's internal documents.

68. Keller Williams - Des Moines's decisions to improperly obtain Iowa Realty's private comments, publicize them to every media outlet it could, and then use them as a basis for defamation claims were not made in good faith and were done only to harass Iowa Realty.

IV. Keller Williams - Des Moines Refuses to Engage in Discovery

69. Although it kept the public relations campaign alive through social media, Keller Williams - Des Moines did all it could to avoid actually prosecuting its baseless legal claims. Keller Williams - Des Moines did not engage in good faith discovery and took many steps to deliberately obfuscate the judicial process.

70. By way of example only, and without attempting to be exhaustive, Iowa Realty notes:

- a. Keller Williams - Des Moines made no good faith effort to preserve its documents and admitted that at least one of its investor's emails were destroyed.
- b. Keller Williams - Des Moines refused to make a good faith effort to collect and produce relevant documents. Despite numerous requests for production from Iowa Realty, Keller Williams - Des Moines only searched its emails for the term "lawsuit" and the name of one of its attorneys.
- c. After 11 months of litigation, Keller Williams - Des Moines had produced only 468 pages of documents, most of which were irrelevant, publically available marketing materials. In contrast, Iowa Realty had produced 8,170

pages, including every email it had that referenced Keller Williams - Des Moines in any way.

- d. In the last two months of discovery, after Iowa Realty was forced to file three motions to compel, Keller Williams - Des Moines finally produced nearly 7,000 additional pages, many of which were highly probative and relevant to witnesses that had already been deposed.
- e. Although Keller Williams - Des Moines's attorneys had received numerous emails from Ms. Bell by June 10, 2013, it told the Court on June 21, that it was unable to produce them by its June 14 deadline and asked for a five-week extension. Many of her emails were not produced until August 20, after Ms. Bell had been deposed as the corporate representative and in her individual capacity. The documents were highly probative and contradicted much of Ms. Bell's deposition testimony.
- f. Keller Williams - Des Moines withheld evidence of its communications with its franchisor Keller Williams under an untenable claim of privilege, despite repeatedly asserting that they never discussed legal issues with or solicited legal advice from Keller Williams.
- g. On May 24, 2013, Keller Williams - Des Moines represented to the Court that Keller Williams had no involvement in the case and objected to Iowa Realty's application to issue an out-of-state subpoena to Keller Williams. At that time, however, Keller Williams - Des Moines and its attorneys had in their possession emails proving that Keller Williams was not only funding the litigation, but was in large part directing it.

- h. Iowa Realty obtained a number of highly probative emails from numerous Keller Williams - Des Moines owners and investors that were not produced by Keller Williams - Des Moines.
- i. Without explanation or justification, Keller Williams - Des Moines produced only certain portions of chain emails and refused to produce a number of highly probative attachments.
- j. Without any explanation or justification, Keller Williams - Des Moines refused to make its witnesses available for depositions until the last weeks of discovery, forcing over 20 depositions in a 4-week period.
- k. Keller Williams - Des Moines baselessly objected to Iowa Realty taking the depositions of several witnesses claiming they were irrelevant and had “no relation to the case.” After Iowa Realty cancelled a number of depositions and agreed not to take others, without warning Keller Williams - Des Moines reversed its position and asked Iowa Realty deponents about the witnesses.
- l. Keller Williams - Des Moines deliberately withheld numerous probative documents that contradicted the testimony of many of its witnesses.
- m. Keller Williams - Des Moines failed to disclose the opinions of its own retained experts and then subpoenaed one of its own experts to testify.

71. In Keller Williams - Des Moines’s corporate deposition, its representative made a number of representations that were directly contradicted by documents Keller Williams - Des Moines was deliberately refusing to produce, including:

- a. Despite repeated requests, Keller Williams - Des Moines failed to produce a “Consumer Alert” it had posted on its website that contained a number of

derogatory comments about Iowa Realty. During the corporate deposition, Ms. Bell testified that she had never seen the document and was unaware that it was on Keller Williams - Des Moines's website. Months after the deposition, Keller Williams - Des Moines finally produced emails that proved Ms. Bell was involved in drafting the Consumer Alert and in deciding to post it to the website.

- b. Ms. Bell testified that Ms. Sanders received Iowa Realty's internal documents from someone who coincidentally had moved out of state. A document produced by a third-party, however, showed that Ms. Sanders received Iowa Realty's internal documents from her daughter, Ms. Sarcone, who received them while working for Iowa Realty.
- c. Ms. Bell also testified that Keller Williams had no relation to the case and that she had not had any substantive conversations with Keller Williams. Yet, documents produced much later showed that Keller Williams was not only funding the lawsuit, but was substantially involved in the decision making process and was active in garnering national support for Keller Williams - Des Moines.

V. Keller Williams - Des Moines Deliberately Avoided Judicial Resolution

72. Through more than a year of litigation, Iowa Realty was forced to incur substantial expenses by: (i) responding to 30 interrogatories and 75 requests for production; (ii) extensively searching, reviewing and producing its documents; (iii) defending 14 depositions and taking 8 more; (iv) hiring two experts; (v) retaining counsel in Iowa and in

Texas; and (vi) filing several motions and briefs relating to Keller Williams - Des Moines's frivolous claims and its failure to conduct good faith discovery.

73. On August 27, 2013, with the fact depositions complete and less than 2 weeks before the close of discovery, Keller Williams - Des Moines voluntarily dismissed its Petition. The dismissal came the same day Keller Williams was required by subpoena to finally produce related documents.

74. Keller Williams - Des Moines dismissed its Petition to avoid a judicial ruling on Iowa Realty's motion for summary judgment and motion for discovery sanctions. Keller Williams - Des Moines brought its lawsuit strictly in an attempt to harass and embarrass Iowa Realty. After accomplishing its goals of obtaining all the favorable press it could and costing Iowa Realty as much as possible in time, legal fees, and costs, Keller Williams - Des Moines voluntarily dismissed its lawsuit at the last moment to avoid a certain adverse ruling.

75. Keller Williams - Des Moines exploited even its own voluntary dismissal and used it to continue its marketing and public relations campaign. Specifically, Keller Williams - Des Moines misrepresented to the press that it was dismissing its claims in act of altruism to shield innocent agents (and presumably the agents they would have recruited, and the agents those agents would have recruited) from the lawsuit.

76. Keller Williams - Des Moines's CEO Brian Wentz was quoted as saying: "As an organization we chose to honor our commitment to confidentiality because we felt it wouldn't be appropriate to put those agents and their families under the microscope that releasing their names would have created. Not providing names was the right thing to do."

77. Mr. Wentz also said that: "Really what it boils down to is we're choosing to go win in the marketplace instead of the courtroom;" and that Keller Williams - Des Moines

was now going to start focusing on “its agents, its consumers and growing its market share.”

The same article, however, also reported Mr. Wentz saying that Keller Williams - Des Moines dismissed its lawsuit in part so it could pursue its complaints in other forums, including DMAAR, the Iowa Real Estate Commission, and the Iowa Attorney General.

78. By its own admission, Keller Williams - Des Moines’s claims were a distraction from the business of serving real estate customers. By well-established law and industry standards, they were nothing more.

VI. Damages to Iowa Realty

79. Keller Williams, through its instrument and agent Keller Williams - Des Moines, launched its marketing campaign in a failed attempt to extort a change in Iowa Realty’s lawful and discretionary business policies.

80. Keller Williams, through its instrument and agent Keller Williams - Des Moines, deliberately caused, and continues to cause, as much harm to Iowa Realty’s brand name, goodwill and reputation as it can.

81. Keller Williams, through its instrument and agent Keller Williams - Des Moines, propagated numerous false and misleading news stories and publicly filed a lawsuit it never intended the courts to resolve.

82. Keller Williams, through its instrument and agent Keller Williams - Des Moines, used its pending court action to attack Iowa Realty in the media and then deprived it of a chance to defend itself in court.

83. As a result of Keller Williams and Keller Williams - Des Moines’s marketing and public relations campaign, Iowa Realty suffered substantial harm to its brand name, goodwill and reputation, and was forced to incur substantial legal fees and expenses.

COUNT I – BREACH OF CONTRACT
(DEFENDANTS SUSAN SANDERS, ELIZABETH SARCONI, AND
KELLER WILLIAMS - DES MOINES)

84. Iowa Realty re-alleges paragraphs 1-83 as if fully set forth here.

85. In or around January 1997, Defendant Susan Sanders became a real estate agent with Iowa Realty and entered into an Independent Contractor Agreement with Iowa Realty. The parties updated and amended their contractual relationship several times over the years.

86. Defendant Elizabeth Sarcone became a real estate agent with Iowa Realty in or around October 2008, and similarly entered into an Independent Contractor Agreement with Iowa Realty.

87. Under the terms of their contractual agreements, Defendants Sanders and Sarcone agreed to use their best efforts to maximize profits for Iowa Realty and to act in the best interests of their customers and Iowa Realty.

88. Defendant Sanders breached her contractual agreement, including by investing \$40,000 in Keller Williams - Des Moines, Iowa Realty's competitor, and remaining with Iowa Realty for three months.

89. During those three months, Defendant Sanders also breached her contractual agreement by not using her best efforts to maximize profits for Iowa Realty, and instead covertly working to recruit Iowa Realty customers and agents to join her at Keller Williams - Des Moines.

90. Defendant Sanders also procured internal Iowa Realty documents and gave them to Keller Williams - Des Moines in an attempt to bolster Keller Williams - Des Moines's marketing campaign and its frivolous lawsuit against Iowa Realty.

91. Similarly, Defendant Sarcone committed to Keller Williams - Des Moines and began secretly working to advance its best interests long before leaving Iowa Realty.

92. Although ostensibly working for Iowa Realty, Defendant Sarcone was actually endeavoring to serve the best interests of Keller Williams - Des Moines by working to convince Iowa Realty agents to leave and join her at Keller Williams - Des Moines, and by working to convince Iowa Realty customers to switch to Keller Williams - Des Moines.

93. Defendant Sarcone sent internal Iowa Realty documents to key Iowa Realty customers, took them out of context, and used them to make disparaging comments about Iowa Realty.

94. At all points in time while Defendants Sarcone and Sanders were secretly working for the best interests of Keller Williams - Des Moines, while ostensibly working for Iowa Realty, they were acting on behalf of Keller Williams - Des Moines and at its direction.

95. Iowa Realty fulfilled every aspect of its Independent Contractor Agreements with Defendants Sanders and Sarcone.

96. Because of Defendants Sanders and Sarcone's breaches Iowa Realty suffered substantial damages including lost profits, lost agents, lost customers, and substantial legal fees.

WHEREFORE, Plaintiff Iowa Realty demands judgment against Defendants Sanders, Sarcone and Keller Williams - Des Moines in an amount adequate to compensate Iowa Realty's damages, and for exemplary damages, together with interests, costs, attorneys' fees and such other relief as the Court deems appropriate under the circumstances.

COUNT II – BREACH OF FIDUCIARY DUTY
(DEFENDANTS SANDERS AND SARCONI AND
KELLER WILLIAMS - DES MOINES)

97. Iowa Realty re-alleges paragraphs 1-96 as if fully set forth here.

98. Over and above their contractual relationship, Iowa Realty understood and trusted that Defendants Sanders and Sarcone were acting in the best interests of Iowa Realty and its customers.

99. Defendants Sarcone and Sanders similarly understood that their relationship with Iowa Realty was based on the trust and confidence Iowa Realty placed in their integrity and fidelity to Iowa Realty and its customers.

100. Nonetheless, Defendants Sarcone and Sanders breached their duties by secretly working for the best efforts of Keller Williams - Des Moines, Iowa Realty's competitor, including by: (i) attempting to recruit Iowa Realty agents and customers to leave Iowa Realty and join Keller Williams - Des Moines; (ii) providing Iowa Realty's internal documents to Keller Williams - Des Moines knowing that Keller Williams - Des Moines intended to use those documents as part of its marketing campaign and its frivolous lawsuit against Iowa Realty; and (iii) not working in the best interests of Iowa Realty and its customers.

101. Defendants Sanders and Sarcone breached their fiduciary duties at the direction of Keller Williams - Des Moines and while working as its agents.

102. At all relevant times, Iowa Realty fulfilled its contract and ethical obligations to Defendants Sanders and Sarcone.

103. Defendants Sanders and Sarcone's breach of their fiduciary duties caused Iowa Realty substantial damages including lost profits, lost agents, lost customers, and substantial legal fees.

WHEREFORE, Plaintiff Iowa Realty demands judgment against Defendants Sanders, Sarcone and Keller Williams - Des Moines in an amount adequate to compensate Iowa Realty's damages, and for exemplary damages, together with interests, costs, attorneys' fees and such other relief as the Court deems appropriate under the circumstances.

COUNT III – BREACH OF CONTRACT
(DEFENDANT KELLER WILLIAMS - DES MOINES)

104. Iowa Realty re-alleges paragraphs 1-103 as if fully set forth here.

105. Shortly after Keller Williams - Des Moines was formed, it joined the Des Moines Area Association of Realtors ("DMAAR"). As a member of DMAAR, Keller Williams - Des Moines agreed to abide by DMAAR's rules and policies.

106. Under DMAAR's rules and regulations, each participating broker has the sole discretion to determine the compensation it is willing to offer other participants and is free to make different offers to different participants.

107. DMAAR rules also prohibit a brokerage or an individual agent from expecting any more in compensation than is specifically offered.

108. Keller Williams - Des Moines submitted its complaints against Iowa Realty to DMAAR, and DMAAR resolved each complaint in Iowa Realty's favor.

109. Nonetheless, Keller Williams - Des Moines continued to pursue its claims against Iowa Realty in court and made defamatory comments about Iowa Realty to the press and in social media.

110. Keller Williams - Des Moines's pursuit of its claims against Iowa Realty and its public comments about Iowa Realty were in breach of Keller Williams - Des Moines's contractual obligations with DMAAR.

111. As a member of DMAAR, Iowa Realty was an intended beneficiary of Keller Williams - Des Moines's contractual relationship with DMAAR.

112. Keller Williams - Des Moines's breach of its contractual obligations with DMAAR caused Iowa Realty damages including lost profits, lost agents, substantial legal fees and damage to its reputation and brand name.

WHEREFORE, Plaintiff Iowa Realty demands judgment against Defendant Keller Williams - Des Moines in an amount adequate to compensate Iowa Realty's damages, and for exemplary damages, together with interests, costs, attorneys' fees and such other relief as the Court deems appropriate under the circumstances.

COUNT IV – TORTIOUS INTERFERENCE WITH CONTRACT
(DEFENDANTS KELLER WILLIAMS - DES MOINES AND
KELLER WILLIAMS)

113. Iowa Realty re-alleges paragraphs 1-112 as if fully set forth here.

114. Iowa Realty had a contractual relationship with agents acting as representatives of Iowa Realty.

115. Defendants Keller Williams - Des Moines and Keller Williams knew Iowa Realty had a contractual relationship with all of its agents.

116. Defendants Keller Williams - Des Moines and Keller Williams intentionally and improperly interfered with Iowa Realty's contractual relationship with its agents with the intent of causing harm or destroying Iowa Realty.

117. Defendants Keller Williams - Des Moines and Keller Williams's interference caused Iowa Realty substantial damages.

WHEREFORE, Plaintiff Iowa Realty demands judgment against Defendants Keller Williams - Des Moines and Keller Williams in an amount adequate to compensate Iowa Realty's damages, and for exemplary damages, together with interests, costs, attorneys' fees and such other relief as the Court deems appropriate under the circumstances.

COUNT V – MALICIOUS PROSECUTION
(DEFENDANTS KELLER WILLIAMS - DES MOINES AND
KELLER WILLIAMS)

118. Iowa Realty re-alleges paragraphs 1-117 as if fully set forth here.

119. Keller Williams - Des Moines and Keller Williams, by and through its attorneys, brought a lawsuit against Iowa Realty on June 27, 2012, in Polk County, Iowa (Case No. LACL12-5527).

120. At the time they brought the Petition, Defendants knew, or should have known, their claims had no basis in fact or in law and could not have had a good faith intent to have its claims judicially resolved.

121. Defendants brought their Petition in an attempt to improperly extort a change in Iowa Realty's lawful policies by damaging Iowa Realty's reputation and harming its position in the marketplace.

122. Defendants' actions caused Iowa Realty substantial harm to its brand name, goodwill and reputation, and forced it to incur substantial legal fees and expenses.

123. On August 27, 2013, Keller Williams - Des Moines dismissed its lawsuit to avoid disclosure of probative documents and to avoid judicial resolution of its claims and

deprive Iowa Realty of a favorable ruling on its motion for summary judgment and motion for sanctions.

WHEREFORE, Plaintiff Iowa Realty demands judgment against Defendants Keller Williams - Des Moines and Keller Williams in an amount adequate to compensate Iowa Realty's damages, and for exemplary damages, together with interests, costs, attorneys' fees and such other relief as the Court deems appropriate under the circumstances.

COUNT VI – ABUSE OF PROCESS
(DEFENDANTS KELLER WILLIAMS - DES MOINES AND
KELLER WILLIAMS)

124. Iowa Realty re-alleges paragraphs 1-123 as if fully set forth here.

125. On June 27, 2012, Defendant Keller Williams - Des Moines, at the direction and with the financial support of its principal Keller Williams, filed a Petition against Iowa Realty in the Iowa District Court for Polk County.

126. Before the Petition was filed, Keller Williams - Des Moines circulated it to the press and on social media for the specific purpose of injuring Iowa Realty's reputation and pressuring Iowa Realty to change its lawful and contractually compliant policies.

127. In effect, Defendant Keller Williams - Des Moines used the legal process in an attempt to bolster its complaints about Iowa Realty and garner public sympathy. Defendant Keller Williams - Des Moines had no intent of pursuing or resolving its claims with Iowa Realty.

128. Defendant Keller Williams - Des Moines's abuse of process, at the direction of Keller Williams, caused Iowa Realty substantial damages including damage to its reputation and forced it to incur substantial legal fees.

WHEREFORE, Plaintiff Iowa Realty demands judgment against Defendants Keller Williams - Des Moines in an amount adequate to compensate Iowa Realty's damages, and for exemplary damages, together with interests, costs, attorneys' fees and such other relief as the Court deems appropriate under the circumstances.

COUNT VII – DEFAMATION
(DEFENDANT KELLER WILLIAMS - DES MOINES AND
KELLER WILLIAMS)

129. Iowa Realty re-alleges paragraphs 1-128 as if fully set forth here.

130. Keller Williams - Des Moines and its representatives have repeatedly made false and disparaging statements about Iowa Realty on its website, on social media, and to the press, including but not limited to:

- a. Submitting its non-verified Petition to the press within minutes of filing and before it was even served on Iowa Realty which led to the publication of much of Keller Williams - Des Moines's baseless and defamatory allegations.
- b. Keller Williams - Des Moines's comment in its "Consumer Alert" posted on its website that: (i) "Iowa Realty has implemented a negative and anti-competitive practice of denying commissions to Keller Williams associates in the Des Moines marketplace"; (ii) "Listing your home with a company who is refusing to pay fair commissions to its fellow real estate associates can substantially reduce home sellers' potential buyer marketing;" (iii) "These practices do not represent the best interests of the Des Moines consumers. Our fellow Des Moines home sellers are being underrepresented, underserved, and unknowingly involved in withholding fairly earned income to agents bringing buyers;" (iv) "Though we at the Keller Williams Greater Des Moines market

center have urged Iowa Realty to discontinue the practice of denying commission to Keller Williams associates in our marketplace – a practice that has now denied my fellow Keller Williams associates their fairly earned income for them and their families – it is clear that they have no intention of doing so;” (vi) “We encourage you to urge your friends and neighbors who are buying or selling homes to be wary of a company who relies on unprofessional and anticompetitive business practices. Ask your friends and neighbors to empower themselves by demanding to know why their listings are limited, and ask where their hard-earned money is really going;” (vii) and other statements in the Consumer Alert;

- c. Keller Williams - Des Moines’s comments published by Ms. Andrea V. Brambila in her September 3, 2013, article for Inman news that: (i) Keller Williams - Des Moines dismissed its claims in part because Iowa Realty was seeking names of Keller Williams - Des Moines agents; (ii) that Iowa Realty is “collecting commissions from their consumers indicating that they are cooperating with other brokers and instead sending \$1 ... without disclosing that this is occurring”; (iii) Iowa Realty’s policy is “bad business for them because consumers are figuring out they don’t have all the listings. At least three in the last month have called to say they wanted to buy a house that had just sold but hadn’t appeared on Iowa Realty’s website;” (iv) “It’s a great example where their choice in business practices is actually hurting their own customers;” (v) “We don’t believe it’s in the home seller’s best interest that their brokerage chooses to use the seller’s equity as a pawn;” (vi) “the ethical

question was whether it is right to try to protect a company's market share at the expense of the consumer's interests;" (vii) "Iowa Realty has withheld more than \$600,000 in commissions from Keller Williams agents;" (viii) "Part of the reason behind dropping the lawsuit is that Iowa Realty had indicated in the case's discovery process that abandoning the suit would open the door for discussion between the two rivals;" (ix) "The head of both brokerages had spoken before Keller Williams opened in the Des Moines market and that Keller Williams had requested settlement talks during litigation several times;" and (x) other comments in the September 3, Inman article.

- d. Comments by Mr. Brian Wentz at the end of the Inman article, including: (i) "on our decision, we had strong legal standing, however we choose [sic] not to disclose the names of the agents, which fundamentally changed the direction of the case;" (ii) "The issue here is a broker who chooses to pay only \$1 when one of our agents represents a buyer and successfully closes the transaction, despite the seller having agreed to compensate a co-op broker;" (iii) "To date they have withheld over \$600,000 in commissions;" (iv) Iowa Realty's actions "go against the very spirit of the MLS and our industry, not to mention the goals of the home seller;" and (v) other comments by Mr. Wentz in response to the Inman article.
- e. Keller Williams - Des Moines's comments in its Media Alert titled, "Global Real Estate Company Rallies to Pay Commissions Denied to Des Moines Agents," including "To date, the associates in Des Moines have been denied more than \$100,000 in rightfully earned commissions."

131. Keller Williams - Des Moines's comments caused Iowa Realty substantial damages to its brand name, good will and reputation.

WHEREFORE, Plaintiff Iowa Realty demands judgment against Defendant Keller Williams - Des Moines in an amount adequate to compensate Iowa Realty's damages, and for exemplary damages, together with interests, costs, attorneys' fees and such other relief as the Court deems appropriate under the circumstances.

Dated: October 3, 2013

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